

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of)

Implementation of Sections 3(n)
and 332 of the Communications Act)

GN Docket No. 93-252

Regulatory Treatment of Mobile
Services)

To: The Commission

COMMENTS OF PN CELLULAR, INC. AND AFFILIATES

PN Cellular, Inc. and its affiliates (collectively, "PNC"), by their attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby comment on the above-captioned Notice of Proposed Rulemaking ("NPRM"), GN Docket No. 93-252, FCC Document Number 93-454, released October 8, 1993, in which the Commission has requested comment on proposed rules relating to Congress' mandate to create a comprehensive framework for the regulation of mobile services.^{1/}

PNC and its affiliates provide cellular service on Frequency Block A in more than 30 MSA and RSA markets in the Mid- and Northwestern states. As such PNC, is directly affected by the adoption of rules relating to the regulatory classification and treatment of mobile services and, therefore, has a direct interest in the rules that will be promulgated in this proceeding.

^{1/} Title VI, Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

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I. Regulatory Parity Issues

A. Enhanced Specialized Mobile Radio Service Facilities Operational After August 10, 1993 Should Be Subject to Title II Jurisdiction

The NPRM proposes rules for the classification of mobile services into either "commercial mobile services" or "private mobile services."^{2/} Those services classified as commercial mobile services, including reclassified services provided under Part 90 of the Commission's Rules, will be brought under Title II of the Communications Act.^{3/} The proposed regulatory scheme is intended to create "regulatory parity" to ensure that similar commercial mobile services are regulated in a comparable manner.

By statute, those Part 90 licensees reclassified as commercial mobile carriers will, if providing service prior to August 10, 1993, enjoy deferral from the application of Title II until August 10, 1996.^{4/} Cellular carriers, such as PNC, have always been subject to Title II jurisdiction, which includes, but is not limited to, the Commission's complaint jurisdiction, non-discrimination and just and reasonable rate requirements.^{5/}

PNC urges the Commission to adopt rules to ensure a "level playing field" for both cellular and cellular-like services inherent in Enhanced Specialized Mobile Radio Service ("ESMR").

^{2/} NPRM at ¶ 10, 28.

^{3/} Id. at ¶ 36, 49.

^{4/} Id. at n.3; Budget Act at 6002(c)(2)(B).

^{5/} See NPRM at ¶ 56.

Section 6002(c)(2)(B) of the Budget Act should be construed to require that reclassified Part 90 facilities (other than Private Carrier Paging facilities) be operational prior to August 10, 1993 in order to qualify for the three year deferral of Title II jurisdiction. Under this construction, reclassified private land mobile licensees (e.g., conventional SMR operators) providing service prior to August 10, 1993 will continue to be exempt from Title II jurisdiction until August 10, 1996. Similarly, those ESMR systems operational before August 10, 1993, if any, could qualify for the deferral of Title II jurisdiction. Logic dictates, and regulatory parity requires, that any ESMR system becoming operational after August 10, 1993 be subject to Title II.

B. Part 22 Carriers Should Be Allowed to
Provide Dispatch Service

Consistent with the Congressional and Commission goals of creating regulatory parity, PNC urges the Commission to permit all commercial mobile service providers to provide dispatch service. Cellular carriers have heretofore been prohibited from providing traditional-type dispatch services.^{6/} The Commission notes that Congress has given it the discretion to continue the prohibition under the new regulatory framework unless a finding is made that termination of the prohibition is in the public interest.^{7/} PNC

^{6/} 47 C.F.R. § 22.911. The rules do allow cellular carriers to provide dispatch service to the public so long as each call is carried through the cellular carrier's switch. See 47 C.F.R. § 22.519(d). This dispatch methodology is very expensive to provide.

^{7/} NPRM at ¶ 16.

submits that eliminating the prohibition is in the public interest as it would ensure that SMR and ESMR operators are not given an unfair advantage vis-a-vis cellular carriers. The concept of full and fair competition dictates that, just as SMR and ESMR operators will, under the new regulatory regime, be accorded full interconnection rights ^{8/} to more fully compete with cellular, for example, cellular carriers should be accorded the right to compete in the dispatch service market.

II. Interconnection/Equal Access Issues

The Commission seeks comment on whether it should require commercial mobile service providers to provide interconnection into their switches to other mobile services providers.^{9/} This proposal raises a further question of whether equal access obligations should be imposed upon commercial mobile service providers. No need exists for imposition of burdensome interconnection and/or equal access requirements upon commercial mobile service providers.

The NPRM offers no guidance on what is meant by the concept of requiring commercial mobile service carriers to provide interconnection to other mobile service providers. Thus, any effort by PNC and other parties to analyze and comment on the concept is hindered. For purposes of these comments, PNC is assuming that provision of interconnection by a commercial mobile service provider connotes the carrier opening up its switching and

^{8/} Id. at ¶ 71.

^{9/} Id.

radio transmission facilities to mandatory sharing by other mobile service providers and, perhaps, resellers and customers.

The state of competition in the cellular industry, in particular, does not require imposition of either a mandatory interconnection requirement or an equal access requirement. Unlike monopoly local exchange telephone companies, many of which are now subject to competitive special access collocation requirements,^{10/} and virtually all of which are subject to equal access requirements, vigorous facilities-based cellular competition exists in virtually every market. An additional, and longstanding, safeguard to protect against competitive abuses by cellular carriers is the Commission's resale policy. Further, even more competition to cellular services will soon come to the marketplace in the form of ESMR and PCS service. Because it is logically impossible to conclude that cellular carriers are in any position to leverage control over facilities essential to competition or to discriminate or otherwise thwart competition, no justification exists for imposing classic remedies -- mandatory interconnection and/or an equal access requirement -- for a problem that does not exist.

On the issue of imposing an equal access requirement upon commercial mobile service carriers, it should be noted that PNC and other cellular carriers are actively engaged in long distance resale operations. The revenues from these operations are vital to

^{10/} See Sections 64.1401 and 64.1402 of the Commission's Rules.

the maintenance and expansion of cellular services, and, undoubtedly, will be critical to the viability of future PCS services. No competitive necessity exists for imposition of an equal access requirement and resultant diversion of critically important resale revenues from cellular and other commercial mobile service operators. As a practical matter, the imposition of an equal access requirement upon commercial mobile service providers would generate thorny economic and regulatory issues, including the structure and pricing of access services provided to long distance carriers. In addition, the fact that many cellular carriers, for example, operate clustered, multiple MSA/RSA and, often, multiple state systems with concomitant "local" calling areas will lead to definitional problems of determining what types of calls are and are not subject to the equal access requirement.

Any consideration of an issue with the complexity and ramifications of cellular equal access should be handled in the pending petition for rulemaking proceeding initiated by MCI Telecommunications Corporation ("MCI").^{11/} The proceeding initiated by MCI is not subject to the exceedingly tight deadlines imposed by Congress in the instant proceeding.

^{11/} Policies and Rules Pertaining to the Equal Access Obligations of Cellular Carriers, RM-8012.

III. Forbearance Issues

Finally, the NPRM requests comment on whether the Commission should exercise its new statutory power to exempt commercial mobile services from certain Title II requirements (i.e., tariff regulations, hearings on new rates, FCC power to prescribe rates, contract filing requirements, and regulation of extensions of lines).^{12/} Most of these statutory sections have never been strictly applied to cellular providers and PNC submits that formal exemption of cellular carriers would not disserve the public interest. Further, such provisions are unnecessary to ensure just and reasonable rates and non-discrimination by cellular carriers.^{13/} The recently imposed federal tariff filing requirement, in particular, is burdensome to cellular carriers as well as the Commission, and is counter-productive. Even a cursory review of the recently-filed tariffs suggests that they provide little meaningful information to consumers regarding the actual rates maintained by the filing carriers. The level of actual carrier rates are driven by the volatile competitive forces in the market. Accordingly, the Commission should exercise its statutory authority to forbear.

^{12/} NPRM at ¶ 56.

^{13/} See Id. at ¶ 57.

CONCLUSION

For the foregoing reasons, PNC respectfully requests that the Commission adopt rules for regulating mobile services consistent with its comments herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard M. Tettelbaum, an attorney in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 8th day of November, 1993, had copies of the foregoing "COMMENTS OF PN CELLULAR, INC. AND AFFILIATES" delivered by hand, to the following:

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